

IN THE CHANCERY COURT FOR SULLIVAN COUNTY, TENNESSEE  
SECOND JUDICIAL DISTRICT AT **Blountville**

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STATE OF TENNESSEE, *ex rel.* ROBERT )  
E. COOPER, JR., ATTORNEY GENERAL, )

Plaintiff,

v.

GINA DE'LYNN HODGES PRICE, JEFFREY )  
ADAM PRICE, WILLIAM DOUG PICKEL, )  
and ALLISON PAGE BAIRD, *individually* )  
*and collectively doing business as* REBEL )  
RIDGE KENNELS, CSA BULLDOGS, and )  
CONFEDERATE SANDS, )

Defendants. )

No. C0016896

Chancellor E. G. Moody

FILED 10-3, 2013 @ 1:06 a.m./p.m.  
Katherine Priester, Clerk & Master  
By: Mary B. Master

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**MEMORANDUM IN SUPPORT OF MOTION FOR  
AN ASSESSMENT OF CIVIL PENALTIES AND PERMANENT INJUNCTION IN  
CONNECTION WITH SUMMARY JUDGMENT**

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The State of Tennessee, by and through its Attorney General and Reporter, Robert E. Cooper, Jr., on behalf of the Director of the Division of Consumer Affairs of the Tennessee Department of Commerce and Insurance ("Attorney General" or "State"), submits the following memorandum in support of its motion for an assessment of civil penalties, court costs, attorneys' fees and permanent injunction in connection with summary judgment.

On July 22, 2013, this Court granted summary judgment in favor of the State finding that Defendant Gina De'Lynn Hodges Price, individually and doing business as Rebel Ridge Kennels, CSA Bulldogs and Confederate Sands ("Defendant Gina Price"), is liable for various violations of the TCPA. For factual support of this motion, the State relies exclusively on the Court's findings of fact in its order granting summary judgment. Therefore, there is no factual dispute at issue. With the present motion, the State simply relies on this Court's previous

findings of fact and conclusions of law establishing liability to seek an assessment of civil penalties and a permanent injunction against Defendant Gina Price.

## **I. CONSUMER RESTITUTION**

The State is authorized under the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101 *et seq.* (“TCPA”), to obtain restitution on behalf of consumers who have suffered ascertainable losses.<sup>1</sup> Here, the State has described and the Court has found Defendant Gina Price liable for a myriad of false or misleading affirmative statements and omissions that occurred throughout Defendant Gina Price’s interactions with consumers.

In 2009, the United States District Court for the Eastern District of Tennessee convicted Defendant Gina Price of, among other things, wire fraud and mail fraud in connection with her Internet kennel operations. At the sentencing hearing, the court heard evidence regarding the number of consumers affected and the amounts of consumer losses resulting from Defendant Gina Price Price’s puppy sales. Based on this evidence, the court ordered Ms. Price to pay \$525,595 in consumer restitution through the Tennessee Division of Consumer Affairs.<sup>2</sup> Accordingly, in light of this previous award, the State is not seeking separate consumer restitution with this motion.

## **II. CIVIL PENALTIES**

The State is entitled to and now seeks a reasonable civil penalty of **\$21,900.00** under Tenn. Code Ann. § 47-18-108(b)(3) amounting to a \$300 civil penalty for each of the 73 TCPA violations referenced in the Court’s findings in support of summary judgment against Defendant Gina Price.

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<sup>1</sup> Tenn. Code Ann. § 47-18-108(b)(1).

<sup>2</sup> *United States v. Price*, No. 2:07-CR-95 (E.D. Tenn. Oct. 16, 2009) *aff’d*, (6<sup>th</sup> Cir. Mar. 1, 2012) (No. 09-6256).

The Tennessee Consumer Protection Act provides that in addition to other remedies, the “court may also order payment to the state of a civil penalty of not more than one thousand dollars (\$1,000) *for each violation.*” (emphasis added).<sup>3</sup> A single statement can violate the TCPA multiple times if it presents a separate cause of action.<sup>4</sup> Under the TCPA and comparable state and federal consumer protection case law, civil penalties can be assessed for: (1) each violation of the Act;<sup>5</sup> (2) each publication of deceptive advertisement,<sup>6</sup> and (3) each affected consumer.<sup>7</sup>

This Court has found Defendant Gina Price liable for six separate classifications of unfair and deceptive conduct. The State could assert that each puppy sold by Defendant Gina Price constitutes a separate cause of action under each of these six classifications and multiply each violation by the maximum available civil penalty of \$1,000. However, in the interest of being reasonable, judicial efficiency, and in light of Defendant Gina Price’s economic condition, the State is seeking a very modest calculation of civil penalties.

#### **A. CIVIL PENALTY FACTORS**

There is an absence of state case law governing which factors can be considered in assessing a civil penalty under the TCPA. Other state courts have considered the defendant’s good faith and ability to pay, the injury to the public good, the desire to eliminate the benefits

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<sup>3</sup> Tenn. Code Ann. § 47-18-108(b)(3).

<sup>4</sup> See *State v. Ralph Williams’ N.W. Chrysler Plymouth, Inc.*, 553 P.2d 423, 436 (Wash. 1976) (holding that a violation occurs for each separate and distinct cause of action under Washington’s consumer protection statute).

<sup>5</sup> *Id.* (awarding penalties for each of 10 distinct violations per customer).

<sup>6</sup> *United States v. Reader’s Digest Ass’n, Inc.*, 662 F.2d 955, 966 (3d Cir. 1981) (holding that every solicitation mailed to a consumer constituted a separate violation); *State v. Menard*, 358 N.W.2d 813, 815 (Ct. App. Wis. 1984) (holding that each publication of an advertisement, even if the advertisements were identical, constituted a separate violation; and each newspaper edition may constitute a separate violation).

<sup>7</sup> *State ex rel. Stenberg v. American Midlands, Inc.*, 509 N.W.2d 633, 637 (Neb. 1994) (\$788,000 penalty upheld where the state permits a penalty of \$1,000.00 per victimized consumer); *People v. Bestline Products, Inc.*, 61 Cal. App. 3d 879, 923 (1976) (imposing civil penalties of \$1 million on two companies, \$250,000.00 on one of the officers, \$100,000.00 on the second, and \$50,000.00 on each of the three officers using a “per victim” test).

derived by the unfair and deceptive practice violations, and the need to vindicate the State's authority.<sup>8</sup>

Applying this standard, we look to the first factor: Defendant's good faith and ability to pay. Here, the extent and duration of Defendant Gina Price's pattern of deceptive conduct and evasion of this Court's orders leaves little question that Ms. Price has acted in bad faith. However, while all of Defendant Gina Price's assets are not known, the imposition of a \$1,000 per violation civil penalty based on the number of consumer victims would not make it more likely that Defendant Price could pay the \$525,595 restitution award.

Second, we must consider the injury to the public good and whether Defendant's benefits should be disgorged. Defendant Gina Price's conduct has caused significant injury to the public good. Defendant Gina Price engaged in outright deception and unfair conduct at virtually every stage of the consumer transaction. Ultimately, many consumers were left without the dogs that they purchased or the money that they paid for them. In addition, they were often left with extensive veterinary bills and the heartache of having watched their sick, deformed and dying puppies suffer. Because Defendant Gina Price has injured the public good, the benefits that she has derived from her illegal conduct should be disgorged.

Third, we must assess whether the award will vindicate the State's authority. The State's chief purpose is to maintain the integrity of the marketplace by protecting consumers and honest business from unfair or deceptive practices. Here, Defendant Gina Price operated her business from Tennessee and unfairly and deceptively sold puppies over the internet to consumers

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<sup>8</sup> *Commonwealth v. Amcan Enterprises*, 712 N.E.2d 1205, 1211 (1999) (awarding civil penalties of \$733,000.00), *see also*, *United States v. Reader's Digest Ass'n, Inc.*, 662 F2d 955, 967 (3d Cir. 1981).

nationwide. Assessing an appropriate civil penalty along with a permanent injunction will restore integrity to the Tennessee marketplace and serve as a deterrent to other commercial actors.

## **B. NUMBER OF VIOLATIONS**

In its summary judgment order, this Court identified specific classifications of Defendant Gina Price's conduct that constituted unfair and deceptive business practices. These classifications of conduct are supported by findings of fact including specific citations to affidavits contained in the record of some of Defendant Gina Price's consumer victims who were affected by the specific classifications of violations. Each classification of Defendant Gina Price's unfair and deceptive business practices constitutes a violation of the TCPA and civil penalties can be assessed for each consumer affected by these separate violations.

The numbers of violations per classification are as follows: (1) 28 misrepresentations as to health of the puppies,<sup>9</sup> (2) six misrepresentations as to shipping,<sup>10</sup> (3) 15 misrepresentations as to Defendant's health guarantee,<sup>11</sup> (4) seven misrepresentations as to registration status and paperwork,<sup>12</sup> and (5) 17 misrepresentations or omissions regarding puppy import status.<sup>13</sup>

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<sup>9</sup> Kathy Allen, Stephanie Ambabo, Donna Ashley, Rodolfo Briones, Jr., Julie Chambers, Robin Croce, Tony Diliberto, Karen Diloretto, Richard Frederickson, Ricky Fulp, Carson Ince, Warren James, Ulla Jensen, Pascale Ledoyen, Guadalupe Lemus, Amy Mousseau, Mindy Mullins, Esq., Theresa Nappi, Dr. Paul A. Navin, D.V.M., Jodi Philp, Joseph Pruett, Susan Sharshel, Richard Sproul, Wendy Sweitzer, Christina Swoll, James Winfrey, Eric Yost, Dr. Michael E. Zuccaro, D.V.M.

<sup>10</sup> Stephanie Ambabo, Ricky Fulp, Warren James, Pascale Ledoyen, Amy Mousseau, Susan Sharshel.

<sup>11</sup> Stephanie Ambabo, Donna Ashley, Robin Croce, Richard Frederickson, Warren James, Ulla Jensen, Guadalupe Lemus, Amy Mousseau, Mindy Mullins, Esq., Pascale Ledoyen, Dr. Paul A. Navin, D.V.M., Joseph Pruett, Susan Sharshel, James Winfrey, Eric Yost.

<sup>12</sup> Stephanie Ambabo, Robin Croce, Amy Mousseau, Mindy Mullins, Esq., Jodi Philp, Joseph Pruett, James Winfrey.

<sup>13</sup> Kathy Allen, Stephanie Ambabo, Rodolfo Briones, Jr., Karen Diloretto, Richard Frederickson, Ricky Fulp, Warren James, Ulla Jensen, Guadalupe Lemus, Terry McSwain, David Moreno, Amy Mousseau, Jodi Philp, Joseph Pruett, Susan Sharshel, James Winfrey, Eric Yost.

Relying exclusively on the violations experienced by the consumers cited in the Court's findings of fact, altogether Defendant Gina Price is liable for 73 violations of the TCPA. As previously discussed, the State is authorized to obtain up to \$1,000 in civil penalties per violation.<sup>14</sup> However, in light of the mentioned considerations, the State seeks a total civil penalty of **\$21,900.00** under Tenn. Code Ann. § 47-18-108(b)(3), amounting to a \$300 civil penalty for each of these 73 TCPA violations.

### **III. COSTS**

Tenn. Code Ann. § 47-18-116 provides that the State shall not be responsible for the payment of costs of actions commenced under the TCPA. Therefore, the State requests that Defendant Gina Price be required to pay all costs associated with the filing and distribution of this judgment and any other incidental costs or expenses incurred.

### **IV. ATTORNEYS' FEES**

The State is authorized to seek an award of its reasonable costs and expenses of investigation and prosecution of Defendant Gina Price, including attorneys' fees, pursuant to Tenn. Code Ann. § 47-18-108(4). In the interest of the repayment of consumer restitution, the State requests an Order authorizing the State to petition this Court for an award of its reasonable costs and expenses of investigation and prosecution of Defendant Gina Price, including attorneys' fees, in the event that Defendant Gina Price fails to comply with the terms of this Court's Order.

### **V. ORDER OF PAYMENT**

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<sup>14</sup> Tenn. Code Ann. § 47-18-108(b)(3).

The State requests that Defendant Gina Price's payments shall first be applied to consumer restitution, next to the payment of civil penalties and lastly to the payment of the State's costs and expenses of investigation, including attorneys' fees, if applicable.

## **VI. PERMANENT INJUNCTION**

The State requests that Defendant Gina Price be permanently enjoined and restrained from engaging in the specific classifications of unfair and deceptive conduct that she has previously been found to engage in. The State further requests that Defendant Gina Price be subject to several notice and monitoring requirements.

Tenn. Code Ann § 47-18-108(a)(4) provides that this Court is authorized to issue permanent orders and injunctions to restrain and prevent violations of the Tennessee Consumer Protection Act, and that such orders and injunctions shall be issued without bond. Additionally, Tenn. Code Ann § 47-18-108(b)(2), authorizes this Court to permanently revoke a license to do business in this state if evidence has been presented of knowing and persistent violations of this part.

Here, the Court has already found that Defendant Gina Price has engaged in unfair and deceptive conduct in violation of the TCPA over the course of at least four years. Importantly, Defendant Gina Price was previously found in contempt of this Court for violating the temporary injunction issued by the Court. In light of Defendant Gina Price's knowing and persistent violations of the TCPA and the orders of this Court, it is both reasonable and equitable to enjoin Defendant Gina Price from resuming business until full restitution is made.<sup>15</sup>

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<sup>15</sup> *State ex rel. Fisher v. Warren Star Theater*, 616 N.E.2d 1192, 1198 (Ohio Ct. App. 1992).

CONCLUSION

For the reasons set forth above, the State's motion should be granted in its entirety.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was sent via certified U.S. Mail, postage pre-paid, return receipt requested, to:

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on this the 30<sup>th</sup> day of September, 2013.

  
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